

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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FORTY-SIXTH CIRCUIT TRIAL COURT,

Plaintiff/Counter Defendant/Third  
Party Plaintiff-Appellee,

v

CRAWFORD COUNTY and CRAWFORD  
COUNTY BOARD OF COMMISSIONERS,

Defendants/Counter Plaintiffs/Third  
Party Plaintiffs-Appellants,

and

KALKASKA COUNTY,

Third Party Plaintiff/Counter  
Defendant-Appellant,

and

OTSEGO COUNTY,

Third Party Defendant.

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Before: Murphy, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Appellants appeal by leave granted from the circuit court's order granting costs, attorney fees, and interest to plaintiff. We affirm.

Plaintiff commenced this action to compel higher levels of funding. The counties of Crawford, Kalkaska, and Otsego initially agreed to share responsibility for funding the 46<sup>th</sup> Circuit Trial Court (plaintiff), but, when the proposed budget for the 2001-2002 fiscal year featured substantial increases in retirement benefits and an annual cost-of-living raise, Crawford and Kalkaska counties rescinded their consent and refused to provide funding. Plaintiff brought suit, asserting its entitlement to additional funding on theories of contract and inherent powers. Plaintiff won the relief it sought at trial, along with its attorney fees. In separate appeals, this

Court affirmed incremental awards of attorney fees, 261 Mich App 477; 682 NW2d 519 (2004), as well as plaintiff's success on its substantive claims, 266 Mich App 150, 167-169; 702 NW2d 588 (2005). The Supreme Court reversed the latter, concluding that plaintiff "failed to demonstrate by clear and convincing evidence that the enhanced benefits plan is both 'reasonable and necessary' to allow that court to function serviceably..." 476 Mich 131, 149; 719 NW2d 553 (2006). In a separate order, the Supreme Court additionally vacated 261 Mich App 477 in part, and remanded the case to this Court for reconsideration whether the trial court was entitled to recover its attorney fees in light of its recent decision. 477 Mich 920; 722 NW2d 892 (2006).

This Court answered in the affirmative, noting that its ruling "is inconsistent with the usual rule that attorney fees are recoverable, if at all, only by a prevailing party," but holding that necessity dictated this exception because of "a unique circumstance" concerning "the viability of one of our three branches of government." 273 Mich App 342, 346 n 1; 729 NW2d 914 (2006).

This specific case arose from an award of attorney fees subsequent to the one addressed in 261 Mich App 477. Appellants applied to this Court for leave to appeal that award, in response to which this Court, in an unpublished order entered June 4, 2004, retained jurisdiction and remanded the case to the trial court for reconsideration in light of 261 Mich App 477. After the proceedings on remand, this Court reviewed the resulting order and then, in an unpublished order entered August 2, 2004, dismissed the instant appeal as moot, citing the circuit court's response to the remand from 261 Mich App 477 and this Court's affirmance of it.

However, the Supreme Court vacated that order, and remanded the case to this Court with instructions to hold it in abeyance pending this Court's then-upcoming decision in 273 Mich App 342. Because the latter decision held that a court otherwise unsuccessfully pressing an inherent-powers claim remains entitled to recover its attorney fees, thus reaffirming the fee-related aspects of 261 Mich App 477, that development throws nothing from this court's vacated order in this case into question. Accordingly, we again affirm the award challenged in this case.

Appellants ask this Court to resort to the conflict rule as a means to ultimately avoid some of the prior holdings in this case. We decline the invitation because the conflict rule does not apply in this situation.

MCR 7.215(J)(1) requires this Court to "follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals..." Subrule (2) provides that the conflict-resolution procedure is triggered when a panel of this Court "follows a prior published decision *only* because it is required to do so by subrule (1)..." (Emphasis added.) In this case, the precedents that appellants wish to avoid govern all their issues not through the force of MCR 7.215(J)(1), but because they are law of the case.

Under the law of the case doctrine, an appellate court ruling on a particular issue binds the appellate court and all lower tribunals with regard to that issue. The law of the case mandates that a court may not decide a legal question differently where the facts remain materially the same. The doctrine applies to questions specifically decided in an earlier decision and to questions necessarily

determined to arrive at that decision. [*Webb v Smith*, 224 Mich App 203, 209; 568 NW2d 378 (1997) (citations omitted).]

Appellants attack nothing peculiar to the award specifically at issue in this case, but instead attack the rules this Court has set forth governing a court's entitlement to attorney fees, and the scope of, and limitations to, such awards. Appellants thus raise "questions specifically decided in an earlier decision," in the apparent hope that this Court will "decide a legal question differently where the facts remain materially the same." But because the rules that appellants challenge emerged from the same underlying litigation from which this case arose, they are law of the case, and this Court must respect them. *Webb, supra*.

Because the latter doctrine, not just MCR 7.215(J)(1), compels our adherence to the precedents here challenged, the machinations of MCR 7.215(J)(2) are not available to change any of those rules for present purposes.<sup>1</sup>

Affirmed.

/s/ William B. Murphy  
/s/ Michael J. Talbot  
/s/ Deborah A. Servitto

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<sup>1</sup> Not insignificantly, before the Supreme Court remand, this Court dismissed this case as "moot," citing the circuit court's response to the remand from 261 Mich App 477 and this Court's affirmance. Unpublished order, entered August 2, 2004. Use of that word indicated the strength of this Court's recognition that it was bound to respect its decisions resolving issues arising from the litigation underlying the instant and related appeals.